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EXAMINER	
WEST, JEFFREY R	

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2857	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/537,027	DEN HEUVEL ET AL.	
	Examiner	Art Unit	
	Jeffrey R. West	2857	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 July 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *139-176* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *139-176* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *25 June 2007* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 139-144, 147-152, 154-156, 159-165, and 168-174 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,916,291 to Givens et al.

With respect to claim 139, Givens discloses a system for performing a test of one or more tests on a prosthesis having one or more implantable components implanted in a recipient (column 10, lines 49-58 and column 13, lines 47-53)

comprising: a clinician subsystem, comprising a clinician interface (column 8, lines 63-66, column 9, lines 12-24, and column 16, lines 20-29), configured to enable a clinician to provide one or more clinician input from said clinician interface to perform one or more of selecting and customizing the one or more tests for the recipient (column 9, lines 35-43, column 15, line 59 to column 16, line 29) and a recipient subsystem, comprising a recipient interface (column 8, lines 57-63, column 10, lines 17-24, and column 15, lines 29-58), configured to receive one or more recipient input, from said recipient interface (column 20, lines 15-17 and column 23, lines 41-44 and 54-60), and to perform the one or more tests received from and independent of the clinician subsystem on said prosthesis, in response to said user input to generate the result data (column 19, lines 48-60, column 20, lines 24-46 and column 23, lines 29-44 and 54-63) for communication to said clinician subsystem (column 13, lines 58-63), wherein said clinician subsystem is further configured to received said result data from said recipient subsystem (column 9, lines 47-51).

With respect to claim 140, Givens discloses further comprising: a device interface configured to communicatively couple said recipient subsystem and the prosthesis, and further configured to communicate the one or more tests from said recipient subsystem to the prosthesis (column 10, lines 49-58, column 19, lines 34-59 and Figure 11).

With respect to claim 141, Givens discloses further comprising: one or more computers configured to provide said clinician interface and said recipient interface (column 10, lines 17-32).

With respect to claim 142, Givens discloses wherein said computer configured to provide said clinician interface and said computer configured to provide said recipient interface are the same computer (column 24, lines 8-49).

With respect to claim 143, Givens discloses wherein said one or more computers configured to provide said clinician interface and recipient interface comprise a first computer configured to provide said clinician interface and a second computer configured to provide said recipient interface (column 10, lines 17-32).

With respect to claim 144, Givens discloses wherein said first and second computers are physically remote with respect to one another and are communicatively coupled to one another (column 8, line 57 to column 9, line 11).

With respect to claim 147, Givens discloses further comprising: a storage medium configured to store said selected or customized one or more tests (column 14, lines 57-59).

With respect to claim 148, Givens discloses further comprising: a storage medium configured to store said result data (column 9, lines 24-33).

With respect to claim 149, Givens discloses wherein said storage medium is a portable storage medium (column 8, lines 3-6).

With respect to claim 150, Givens discloses wherein the recipient subsystem is further configured to deliver the result data to the clinician subsystem, and further wherein the clinician subsystem is further configured to perform an assessment of the result data (column 18, lines 63-66).

With respect to claim 151, Givens discloses wherein the result data is configured to be delivered via the Internet (column 8, line 57 to column 9, line 11).

With respect to claim 152, Givens discloses wherein said device interface is an external port on said recipient subsystem (column 15, lines 45-47, column 19, lines 34-59, and Figure 11).

With respect to claim 154, Givens discloses wherein said clinician subsystem is configured to control said recipient subsystem as the one or more tests is being performed (column 4, lines 19-32 and column 15, lines 59-66).

With respect to claim 155, Givens discloses wherein said clinician subsystem is configured to commence the one or more tests being performed by the recipient interface (column 20, lines 17-23 and column 20, line 66 to column 21, line 8).

With respect to claim 156, Givens discloses a method for performing one or more tests on a prosthesis having one or more implantable components implanted in a recipient comprising (column 10, lines 49-58 and column 13, lines 47-53): selecting one or more tests via a clinician subsystem, comprising a clinician interface (column 8, lines 63-66, column 9, lines 12-24, and column 16, lines 20-29), configured to allow a clinician to provide clinician input to the clinician interface to select the one or more tests for the recipient (column 15, line 59 to column 16, line 29), customizing said selected one or more tests using the clinician interface (column 9, lines 35-43, column 15, line 59 to column 16, line 29); delivering said customized one or more tests to a recipient subsystem (column 9, lines 35-43), comprising a recipient interface (column 8, lines 57-63, column 10, lines 17-24, and column 15, lines 29-

58); performing said customized one or more tests on the prosthesis using the recipient subsystem and independent of the clinician subsystem (column 19, lines 48-60, column 20, lines 24-46 and column 23, lines 29-44 and 54-63), to generate the result data; and delivering the result data to the clinician subsystem (column 9, lines 47-51 and column 13, lines 58-63).

With respect to claim 159, Givens discloses wherein the recipient subsystem further comprises a storage medium, further comprising: storing said customized one or more tests for said delivering said customized one or more tests (column 14, lines 57-59).

With respect to claim 160, Givens discloses wherein the recipient subsystem further comprises a storage medium configured to store said result data (column 9, lines 24-33 and column 23, lines 23-27).

With respect to claim 161, Givens discloses wherein the storage medium is a portable storage medium (column 8, lines 3-6).

With respect to claim 162, Givens discloses wherein said delivering said customized one or more tests and the respective result data is delivered via the Internet (column 8, line 57 to column 9, line 11).

With respect to claim 163, Givens discloses wherein said performing said customized one or more tests further comprises: controlling the recipient subsystem as the one or more tests is being performed (column 4, lines 19-32 and column 15, lines 59-66).

With respect to claim 164, Givens discloses wherein said performing said customized one or more tests further comprises: commencing, but not controlling, the one or more tests being performed by the recipient interface (i.e. commence the test to be performed on the stand-alone recipient system) (column 20, lines 17-23 and column 20, line 66 to column 21, line 8).

With respect to claim 165, Givens discloses a computer readable medium comprising computer code instructions which, when executed by a computer system (column 8, lines 7-22), cause the computer system to perform a test method on a prosthesis having one or more implantable components implanted in a recipient (column 10, lines 49-58 and column 13, lines 47-53), the method comprising: selecting one or more tests via a clinician subsystem, comprising a clinician interface (column 8, lines 63-66, column 9, lines 12-24, and column 16, lines 20-29), configured to allow a clinician to provide clinician input to the clinician interface to select the one or more tests for the recipient (column 15, line 59 to column 16, line 29), customizing said selected one or more tests using the clinician interface (column 9, lines 35-43, column 15, line 59 to column 16, line 29); delivering said customized one or more tests to a recipient subsystem (column 9, lines 35-43), comprising a recipient interface (column 8, lines 57-63, column 10, lines 17-24, and column 15, lines 29-58); performing said customized one or more tests on the prosthesis using the recipient subsystem and independent of the clinician subsystem (column 19, lines 48-60, column 20, lines 24-46 and column 23, lines 29-44 and 54-

63), to generate the result data; and delivering the result data to the clinician subsystem (column 9, lines 47-51 and column 13, lines 58-63).

With respect to claim 168, Givens discloses wherein the recipient subsystem further comprises a storage medium, further comprising: storing said customized one or more tests for said delivering said customized one or more tests (column 14, lines 57-59).

With respect to claim 169, Givens discloses wherein the recipient subsystem further comprises a storage medium configured to store said result data (column 9, lines 24-33 and column 23, lines 23-27).

With respect to claim 170, Givens discloses wherein the storage medium is a portable storage medium (column 8, lines 3-6).

With respect to claim 171, Givens discloses wherein said delivering said customized one or more tests and the respective result data is delivered via the Internet (column 8, line 57 to column 9, line 11).

With respect to claim 172, Givens discloses wherein said performing said customized one or more tests further comprises: controlling the recipient subsystem as the one or more tests is being performed (column 4, lines 19-32 and column 15, lines 59-66).

With respect to claim 173, Givens discloses wherein said performing said customized one or more tests further comprises: commencing, but not controlling, the one or more tests being performed by the recipient interface (i.e. commence the

test to be performed on the stand-alone recipient system) (column 20, lines 17-23 and column 20, line 66 to column 21, line 8).

With respect to claim 174, Givens discloses a system for performing a test on a prosthesis having one or more implantable components implanted in a recipient (column 10, lines 49-58 and column 13, lines 47-53) comprising: means for selecting one or more tests via a clinician subsystem (column 8, lines 63-66, column 9, lines 12-24, and column 16, lines 20-29) configured to allow a clinician to provide clinician input to select the one or more tests for the recipient (column 15, line 59 to column 16, line 29); means for customizing said selected one or more tests (column 9, lines 35-43, column 15, line 59 to column 16, line 29); means for delivering said customized one or more tests to a recipient subsystem (column 9, lines 35-43); means for performing said customized one or more tests on the prosthesis, using the recipient subsystem and independent of the clinician subsystem (column 19, lines 48-60, column 20, lines 24-46 and column 23, lines 29-44 and 54-63), to generate the result data; and means for delivering the result data to the clinician subsystem (column 9, lines 47-51 and column 13, lines 58-63).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 145, 146, 153, 157, 158, 166, 167, 175, and 176 are rejected under 35 U.S.C. 103(a) as being unpatentable over Givens in view of U.S. Patent No. 5,626,629 to Faltys et al.

As noted above, the invention of Givens teaches many of the features of the claimed invention, and while the invention of Givens does teach testing, using customized tests, a prosthesis which generates test results, Givens is not explicit in storing such tests/results in the prosthesis. Further, while Givens does teach coupling the prosthesis to a recipient subsystem, Givens is not explicit in specifying that the coupling is via a cable.

Faltys discloses a system for performing one or more tests (column 7, lines 10-13 and 22-26, column 8, lines 44-55, column 9, lines 6-16, and column 10, lines 10-12) on a prosthesis having one or more implantable components implanted in a recipient (column 5, lines 19-21) comprising: a clinician subsystem, comprising a clinician interface (column 5, lines 35-50), configured to enable a clinician to provide one or more clinician input from said clinician interface to perform one or more of selecting and customizing the one or more tests for the recipient (column 6, lines 51-55, column 7, lines 41-65, column 10, lines 26-53, and column 15, lines 34-55, and column 22, lines 51-53); and a recipient subsystem, comprising a recipient interface (column 5, lines 51-66), configured to receive one or more recipient input, from said recipient interface (column 4, lines 22-25), and to generate the result data (column 6, lines 51-55, column 14, line 53 to column 15, line 6), wherein said clinician

subsystem is further configured to received said result data from said recipient subsystem (column 8, lines 10-43) wherein the prosthesis is configured to store said selected or customized one or more tests (column 6, lines 51-55 and column 9, lines 40-61), store said result data (column 9, lines 57-61), and is coupled to said recipient subsystem using a cable (column 5, line 51 to column 6, line 17 and Figure 1).

It would have been obvious to one having ordinary skill in the art to modify the invention of Givens to explicitly store the tests/results in the prosthesis, as taught by Faltys, because, as suggested by Faltys, the combination would have improved the system of Givens by storing important information in the prosthesis itself so that the data will be readily available for future use and/or to provide to a clinician when the network connection fails or during routine in-office clinician visits (column 2, lines 51-65, column 6, lines 51-55 and column 9, lines 40-61).

It would have been obvious to one having ordinary skill in the art to modify the invention of Givens to explicitly specify that the coupling is via a cable, as taught by Faltys, because one having ordinary skill in the art would recognize a cable as a conventional means for connecting a prosthesis to an interface and, as suggested by Faltys, the combination would have provides a suitable, accurate, and secure means for connecting the prosthesis and interface for communication in Givens (column 5, line 51 to column 6, line 17 and Figure 1).

6. Claims 139-176 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,626,629 to Faltys et al. in view of U.S. Patent No. 5,909,497 to Alexandrescu.

With respect to claim 139, Faltys discloses a system for performing one or more tests (column 7, lines 10-13 and 22-26, column 8, lines 44-55, column 9, lines 6-16, and column 10, lines 10-12) on a prosthesis having one or more implantable components implanted in a recipient (column 5, lines 19-21) comprising: a clinician subsystem, comprising a clinician interface (column 5, lines 35-50), configured to enable a clinician to provide one or more clinician input from said clinician interface to perform one or more of selecting and customizing the one or more tests for the recipient (column 6, lines 51-55, column 7, lines 41-65, column 10, lines 26-53, and column 15, lines 34-55, and column 22, lines 51-53); and a recipient subsystem, comprising a recipient interface (column 5, lines 51-66), configured to receive one or more recipient input, from said recipient interface (column 4, lines 22-25), and to generate the result data (column 6, lines 51-55, column 14, line 53 to column 15, line 6), wherein said clinician subsystem is further configured to received said result data from said recipient subsystem (column 8, lines 10-43).

With respect to claim 140, Faltys discloses a device interface configured to communicatively couple said recipient subsystem and the prosthesis, and further configured to communicate the one ore more tests from said recipient subsystem to the prosthesis (column 5, line 51 to column 6, line 17 and Figure 1).

With respect to claim 141, Faltys discloses one or more computers configured to provide said clinician interface and said recipient interface (column 5, lines 21-30).

With respect to claim 142, Faltys discloses that said computer configured to provide said clinician interface and said computer configured to provide said recipient interface are the same computer (column 5, lines 21-30 and column 22, line 61 to column 23, line 7).

With respect to claim 145, Faltys discloses that the prosthesis is configured to store said selected or customized one or more tests (column 6, lines 51-55 and column 9, lines 40-61).

With respect to claim 146, Faltys discloses that the prosthesis is configured to store said result data (column 9, lines 57-61).

With respect to claim 147, Faltys inherently discloses a storage medium configured to store said selected or customized one or more tests (column 6, lines 43-55).

With respect to claim 148, Faltys inherently discloses a storage medium configured to store said result data (column 6, lines 60-63 and column 7, lines 41-65).

With respect to claim 149, Faltys discloses that said storage medium is a portable storage medium (column 22, lines 35-44).

With respect to claim 150, Faltys discloses that the recipient subsystem is further configured to deliver the result data to the clinician subsystem, and further wherein

the clinician subsystem is further configured to perform an assessment of the result data (column 8, lines 2-43).

With respect to claim 152, Faltys discloses that said device interface is an external port on said recipient subsystem (column 5, line 51 to column 6, line 17, Figure 1, and column 22, line 61 to column 23, line 7).

With respect to claim 153, Faltys discloses a cable coupled between said recipient subsystem and said prosthesis (column 5, line 51 to column 6, line 17 and Figure 1)

With respect to claim 154, Faltys discloses that said clinician subsystem is configured to control said recipient subsystem as the one or more tests is being performed (column 17, lines 35-57).

With respect to claim 155, Faltys discloses that said clinician subsystem is configured to commence the one or more tests being performed by the recipient interface (column 15, lines 19-28, column 15, lines 37-48, column 16, lines 36-38).

With respect to claim 156, Faltys discloses a method for performing one or more tests (column 7, lines 10-13 and 22-26, column 8, lines 44-55, column 9, lines 6-16, and column 10, lines 10-12) on a prosthesis having one or more implantable components implanted in a recipient (column 5, lines 19-21) comprising: selecting one or more tests via a clinician subsystem, comprising a clinician interface (column 5, lines 35-50), configured to allow a clinician to provide clinician input to the clinician interface to select the one or more tests for the recipient (column 7, lines 41-65 and column 15, lines 34-55); customizing said selected one or more tests using the

clinician interface (column 6, lines 51-55, column 7, lines 41-65, column 10, lines 26-53, and column 15, lines 34-55, and column 22, lines 51-53); delivering said customized one or more tests to a recipient subsystem (column 6, lines 51-55 and column 9, lines 40-61), comprising a recipient interface (column 5, lines 51-66); performing said customized one or more tests on the prosthesis to generate the result data (column 6, lines 51-55, column 14, line 53 to column 15, line 6); and delivering the result data to the clinician subsystem (column 8, lines 2-43).

With respect to claim 157, Faltys discloses that the prosthesis is configured to store said customized one or more tests (column 6, lines 51-55 and column 9, lines 40-61).

With respect to claim 158, Faltys discloses that the prosthesis is configured to store said result data (column 9, lines 57-61).

With respect to claim 159, Faltys inherently discloses that the recipient subsystem further comprises a storage medium further comprising storing said customized one or more tests for said delivering said customized one or more tests (column 6, lines 51-55 and column 9, lines 40-61).

With respect to claim 160, Faltys inherently discloses that the recipient subsystem further comprises a storage medium configured to store said result data (column 9, lines 57-61).

With respect to claim 161, Faltys discloses that the storage medium is a portable storage medium (i.e. as part of a portable device) (column 6, lines 51-55 and column 9, lines 40-61).

With respect to claim 163, Faltys discloses that performing said customized one or more tests further comprises: controlling the recipient subsystem as the one or more tests is being performed (column 17, lines 35-57).

With respect to claim 164, Faltys discloses that performing said customized one or more tests further comprises: commencing, but not controlling, the one or more tests being performed by the recipient interface (i.e. in the sweep test, for example, the test is commenced after which time the test proceeds automatically to repeat current application without any subsequent control as long as the tones are in sequence) (column 16, lines 36-49).

With respect to claim 165, Faltys discloses a computer readable medium comprising computer code instructions which, when executed by a computer system, cause the computer system to (column 5, lines 19-25) perform a test method on a prosthesis having one or more implantable components implanted in a recipient (column 5, lines 19-21), the method comprising: selecting one or more tests (column 7, lines 10-13 and 22-26, column 8, lines 44-55, column 9, lines 6-16, and column 10, lines 10-12) via a clinician subsystem, comprising a clinician interface (column 5, lines 35-50), configured to allow a clinician to provide clinician input to the clinician interface to select the one or more tests for the recipient (column 7, lines 41-65 and column 15, lines 34-55); customizing said selected one or more tests using the clinician interface (column 6, lines 51-55, column 7, lines 41-65, column 10, lines 26-53, and column 15, lines 34-55, and column 22, lines 51-53); delivering said customized one or more tests to a recipient subsystem (column 6, lines 51-55

and column 9, lines 40-61), comprising a recipient interface (column 5, lines 51-66); performing said customized one or more tests on the prosthesis using the recipient subsystem to generate the result data (column 6, lines 51-55, column 14, line 53 to column 15, line 6); and delivering the result data to the clinician subsystem (column 8, lines 2-43).

With respect to claim 166, Faltys discloses that the prosthesis is configured to store said customized one or more tests (column 6, lines 51-55 and column 9, lines 40-61).

With respect to claim 167, Faltys discloses that the prosthesis is configured to store said result data (column 9, lines 57-61).

With respect to claim 168, Faltys inherently discloses that the recipient subsystem further comprises a storage medium further comprising storing said customized one or more tests for said delivering and customized one or more tests (column 6, lines 51-55 and column 9, lines 40-61).

With respect to claim 169, Faltys inherently discloses that the recipient subsystem further comprises a storage medium configured to store said result data (column 9, lines 57-61).

With respect to claim 170, Faltys discloses that the storage medium is a portable storage medium (i.e. as part of a portable device) (column 6, lines 51-55 and column 9, lines 40-61).

With respect to claim 172, Faltys discloses that performing said customized one or more tests further comprises: controlling the recipient subsystem as the one or more tests is being performed (column 17, lines 35-57).

With respect to claim 173, Faltys discloses that performing said customized one or more tests further comprises: commencing, but not controlling, the one or more tests being performed by the recipient interface (i.e. in the sweep test, for example, the test is commenced after which time the test proceeds automatically to repeat current application without any subsequent control as long as the tones are in sequence) (column 16, lines 36-49).

With respect to claim 174, Faltys discloses a system for performing a test of a prosthesis having one or more implantable components implanted in a recipient (column 5, lines 19-21) comprising: means for selecting one or more tests (column 7, lines 10-13 and 22-26, column 8, lines 44-55, column 9, lines 6-16, and column 10, lines 10-12) via a clinician subsystem (column 5, lines 35-50) configured to allow a clinician to provide clinician input to select the one or more tests for the recipient (column 7, lines 41-65 and column 15, lines 34-55); means for customizing said selected one or more tests (column 6, lines 51-55, column 7, lines 41-65, column 10, lines 26-53, and column 15, lines 34-55, and column 22, lines 51-53); means for delivering said customized one or more tests (column 6, lines 51-55 and column 9, lines 40-61) to a recipient subsystem (column 5, lines 51-66); means for performing said customized one or more tests on the prosthesis, using the recipient subsystem to generate the result data (column 6, lines 51-55, column 14, line 53 to column 15,

line 6); and means for delivering the result data to the clinician subsystem (column 8, lines 2-43).

With respect to claim 175, Faltys discloses that the prosthesis is configured to store said customized one or more tests (column 6, lines 51-55 and column 9, lines 40-61).

With respect to claim 176, Faltys discloses that the prosthesis is configured to store said result data (column 9, lines 57-61).

As noted above, the invention of Faltys teaches many of the features of the claimed invention and while the invention of Faltys does teach a computer that process software instructions and output signals to perform testing of a hearing prosthesis through a recipient interface as well as allowing visualization of results by a clinician through a clinician interface, Faltys does not explicitly indicate that the interfaces are provided by separate remote computers connected by the Internet to allow independent testing to be performed by the recipient interface.

Alexandrescu teaches a programmable hearing aid instrument and programming method thereof including a recipient interface (column 4, lines 4-19) provided by a computer located remote from a clinician interface (column 8, lines 19-33) wherein the recipient interface is operable to obtain software instructions from the hearing prosthesis (column 5, lines 37-49), perform independent testing using the recipient interface (column 8, lines 19-33) and deliver data specific to the hearing prosthesis (i.e. results) electronically to the clinician/specialist interface (column 5, lines 17-20) using the Internet (column 7, line 66 to column 8, line 4).

It would have been obvious to one having ordinary skill in the art to modify the invention of Faltys to explicitly indicate that the interfaces are provided by separate remote computers connected by the Internet to allow independent testing to be performed by the recipient interface, as taught by Alexandrescu, because, as suggested by Alexandrescu, the combination would have improved the recipient's programming of the device by providing specific programming for the environment in which the recipient is intending to use the device (column 8, lines 19-33) while allowing an experienced specialist to obtain response data from the environment to aid in tailoring the response parameters for the particular environment (column 1, lines 11-18, column 5, lines 17-20, and column 8, lines 5-18).

Response to Arguments

7. Applicant's arguments with respect to claims 139-176 have been considered but are moot in view of the new ground(s) of rejection.

The following arguments, however, are noted:

Applicant argues:

> Unlike Applicants' claimed invention, Faltys describes a fitting system 10 which both prepares and performs the fitting process on the patient system 12 (prosthesis). Applicants' independent claim 139, as amended, describes a clinician subsystem which allows a clinician to use the clinician subsystem to select and customize the test, and a separate component (a recipient subsystem) to receive and then perform the tests on the prosthesis. Clearly, the device described in Faltys does not anticipate Applicants' invention as claimed. First, the Faltys device is not described as comprising two separate subsystems as is the case with Applicants' claimed invention. Rather, there is a single fitting system 10 which is described as using various input and other control devices to carry out the fitting process…

The Examiner disagrees with Applicant's indication that "Faltys device is not described as comprising two separate subsystems", but instead asserts that Faltys is explicit in presenting two separate subsystems "10" and "12" (Figure 1) with "10" being described as an "implantable cochlear stimulator (ICS) fitting system" and "12" being described as a "patient system" (column 5, lines 19-21).

Applicant argues:

> ...Also, the portion of Faltys which the Examiner refers to as being the "recipient subsystem" is in fact patient system 12, which includes the speech processor 36 and other various transmitting/receiving coils 42, 48 and other components of the hearing prosthesis, and not a part of fitting system 10. The fact that the Faltys apparatus is a single fitting system 10...

The Examiner agrees that the patient system "12" of Faltys corresponds to the recipient subsystem as claimed. The Examiner also asserts that Applicant's indication that the patient system/recipient subsystem contains components that are not part of fitting system "10", reinforces the Examiner's indication that Faltys is explicit in presenting two separate subsystems "10" and "12" (Figure 1) and detracts from Applicant's argument that "the Faltys apparatus is a single fitting system 10".

Applicant argues:

> ...which does not select and/or customize various tests to be provided to any recipient subsystem for separate and independent performing of those selected and/or customized tests does not provide the benefits afforded by a system so

> configured. For example, the system described by Faltys would not allow the tests to be performed at a later time or from a remote computer or physical location. Therefore, Faltys does not anticipate Applicants' invention as claimed above. Faltys also does not suggest Applicants' claimed invention as there is no suggestion whatsoever for modifying Faltys, or any other reference on record, to provide the various benefits afforded by Applicants' claimed invention. Therefore, Faltys fails to teach or suggest every element of independent claim 139, for at least the reasons stated above.

The Examiner asserts that the Office Action indicates that while the invention of Faltys does teach a computer that process software instructions and output signals to perform testing of a hearing prosthesis through a recipient interface as well as allowing visualization of results by a clinician through a clinician interface, Faltys does not explicitly indicate that the interfaces are provided by separate remote computers connected by the Internet.

The Examiner then asserts that Alexandrescu teaches a programmable hearing aid instrument and programming method thereof including a recipient interface (column 4, lines 4-19) provided by a computer located remote from a clinician interface (column 8, lines 19-33) wherein the recipient interface is operable to obtain software instructions from the hearing prosthesis (column 5, lines 37-49), perform independent testing using the recipient interface (column 8, lines 19-33) and deliver data specific to the hearing prosthesis (i.e. results) electronically to the clinician/specialist interface (column 5, lines 17-20) using the Internet (column 7, line 66 to column 8, line 4).

The Examiner further maintains that it would have been obvious to one having ordinary skill in the art to modify the invention of Faltys to explicitly indicate that the

interfaces are provided by separate remote computers connected by the Internet, as taught by Alexandrescu, because, as suggested by Alexandrescu, the combination would have improved the recipient's programming of the device by providing specific programming for the environment in which the recipient is intending to use the device (column 8, lines 19-33) while allowing an experienced specialist to obtain response data from the environment to aid in tailoring the response parameters for the particular environment (column 1, lines 11-18, column 5, lines 17-20, and column 8, lines 5-18).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

U.S. Patent No. 6,334,072 to Leysieffer teaches a system for performing a test on a hearing prosthesis implanted in a recipient (column 8, lines 24-26) comprising: a testing computer (column 6, lines 49-52) comprising a processor configured to process software instructions and to output signals in response to said processed software instructions (column 7, lines 38-52); a prosthesis interface configured to transfer said outputted signals from said testing computer to the hearing prosthesis interfaced with said testing computer (column 6, lines 45-64); and a recipient interface configured to receive a control input from the recipient of the hearing and to cause said processor to perform said test in response to said control input (column 6, line 65 to column 7, line 7).

U.S. Patent No. 6,115,478 to Schneider teaches an apparatus for and method of programming a digital hearing prosthesis comprising a local system and computer and a remote system and computer wherein the remote system controls the local system to initiate synthesizing signals for transmission to the hearing prosthesis (column 9, lines 50-58).

U.S. Patent No. 6,879,693 to Miller et al. teaches a method and system for external assessment of hearing aids that include implanted actuators.

U.S. Patent Application Publication No. 2002/0176584 to Kates teaches an apparatus and methods for hearing aid performance measurement, fitting, and initialization.

U.S. Patent No. 6,366,863 to Bye et al. teaches a portable hearing-related analysis system.

U.S. Patent No. 6,115,478 to Schneider teaches an apparatus and method of programming a digital hearing aid.

U.S. Patent No. 4,847,617 to Silvian teaches a high speed digital telemetry system for implantable devices.

U.S. Patent No. 5,609,616 to Schulman et al. teaches a physician's testing system and method for testing an implantable cochlear stimulator.

U.S. Patent No. 7,181,297 to Pluvinage et al. teaches a system and method for delivering customized audio data.

EP Patent Application Publication No. 0 124 930 to Crosby et al. teaches a cochlear implant system for an auditory prosthesis.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY R. WEST whose telephone number is (571)272-2226. The examiner can normally be reached on Monday through Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eliseo Ramos-Feliciano can be reached on (571)272-7925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey R. West/
Primary Examiner, Art Unit 2857

November 24, 2008